

REMARKS

In view of the following remarks, applicant believes the pending application is in condition for allowance.

I. PRELIMINARY REMARKS

This paper is presented in response to the final office action dated November 25, 2009, in which all pending claims (25-27, 29, and 31-41) were rejected, and is accompanied by a request for continued examination and the requisite fee.

II. OUTSTANDING REJECTIONS

Claims 25-27, 29, and 31-41 have been rejected under 35 U.S.C. § 103(a) as obvious over Policappelli et al., U.S. Patent No. 5,612,039 (“Policappelli”) in view of Lowenstein, U.S. Patent No. 3,764,692 (“Lowenstein”).

Claims 25-27, 29, and 31-41 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claims 1, 2, 6, 10, 11, and 13-36 of copending Application No. 11/209,429.

III. PATENTABILITY ARGUMENTS

- A. The rejections under 35 USC §103 in view of Policappelli and Lowenstein should be withdrawn.

The rejection of all pending claims under 35 U.S.C. §103(a) should be withdrawn because the mixed cation salt of hydroxycitric acid (“HCA”) is not obvious in light of the references. The pending claims require the presence of calcium *and* potassium or sodium, or a mixture thereof. The references, Lowenstein and Policappelli, do not teach or suggest all the claim limitations. Each reference teaches single cation salts of HCA; there is no disclosure regarding mixed cation salts of HCA. Policappelli merely recites a calcium salt of HCA. Policappelli at col. 5, lines 66-67. Lowenstein merely recites various single cation salts of HCA. Lowenstein at col. 2, lines 1-8. Furthermore, neither reference discloses the weight percentages recited in the claims.

Neither reference discloses or suggests a double or triple mixed salt of HCA. Although the action on page 3 states that formation of a double or triple salt is inherent,

neither Lowenstein nor Policappelli disclose *mixed* cation salts of HCA. There is no mixing of sodium, calcium, or potassium hydroxide in Lowenstein or Policappelli. Although the Action states that Lowenstein does not recite language that restricts the disclosed salt to a single cation salt, the teachings of Lowenstein do not lead one of ordinary skill in the art to a *mixed* double or triple salt of HCA. Instead, Lowenstein discloses only single (not mixed) cation salts of HCA. Furthermore, the examples of Lowenstein are illustrative of the disclosure regarding single cation salts of HCA.

In addition, Lowenstein fails to provide the motivation to modify Policappelli to obtain a *mixed* double or triple salt of HCA, as recited by the pending claims. Neither reference discloses or recognizes the problem identified by the inventors that calcium HCA is only moderately soluble and that potassium HCA is highly hygroscopic. One of ordinary skill in the art, upon reading Lowenstein, would have no reason to modify the teachings of Policappelli to form a mixed double or triple salt of HCA. Rather, one of ordinary skill in the art would replace the calcium salt of Policappelli with another single salt as listed in Lowenstein. In addition, neither reference suggests that a *mixed* double or triple salt of the pending claims has both increased solubility and decreased hygroscopicity over the individual salts of HCA. Therefore, Lowenstein fails to provide a motivation to modify the teachings of Policappelli to arrive at the claimed invention.

The action states that “[p]roperties are the same when the structure and composition are the same.” Action at p. 4. However, the claimed compositions are not the same. The claimed compositions are *mixed* cation salts of HCA. In contrast, the prior art compositions are single (not mixed) cation salts of HCA. Furthermore, the claimed properties of high solubility and low hygroscopicity were not present in the compounds disclosed in Lowenstein and Policappelli.

Additionally, secondary considerations, such as unexpected results, must be considered when discussing obviousness. The present invention of the mixed cation salt of HCA produces unexpected results. The mixed cation salt of HCA has better solubility, hygroscopicity, and palatability properties than the single cation salts disclosed in the prior art. Each single cation salt of HCA is problematic for use in dietary supplements. The specification details the problems associated with single cation salts of HCA at page 3, lines

25-28. Calcium salt of HCA, which is disclosed in Policappelli, has poor solubility, reducing bioavailability. *Id.* at p. 3, lines 27-28. Potassium salt of HCA, which is disclosed in Lowenstein, is highly hygroscopic, reducing shelf life. *Id.* at p. 3, lines 25-26. There is no indication or reasonable expectation in the prior art that mixed cation salts of HCA would have high solubility and low hygroscopicity. Therefore, the unexpected properties, increased bioavailability and minimal hygroscopicity, of the mixed cation salt of HCA demonstrate that the combination is not obvious.

Finally, this combination of salts leads to better bioavailability and shelf life for dietary supplements, a true improvement in the area of dietary supplements. Therefore, it is submitted that this rejection can be withdrawn.

- B. The provisional rejection under the judicially created obviousness-type double patenting should be deferred

Because this is a provisional rejection, applicants will address these rejections if and when they mature.

CONCLUSION

For the foregoing reasons, it is submitted that each of claims 25-27, 29, and 31-41 should now be allowed. Should the Examiner wish to discuss any issues of form or substance, he is invited to contact the undersigned attorney at the number below.

Dated: February 25, 2010

Respectfully submitted,

By 

Pooja A. Van Dyck

Registration No.: 64,806

MARSHALL, GERSTEIN & BORUN LLP

233 S. Wacker Drive, Suite 6300

Sears Tower

Chicago, Illinois 60606-6357

(312) 474-6300

Attorney for Applicant